

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.56.101, 17.56.102, 17.56.308,)	
17.56.309, 17.56.310, 17.56.701,)	(UNDERGROUND STORAGE
17.56.815, 17.56.903, and 17.56.1001)	TANKS)
pertaining to underground storage tanks)	

TO: All Concerned Persons

1. On January 26, 2006, the Department of Environmental Quality published MAR Notice No. 17-241 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 115, 2006 Montana Administrative Register, issue number 2.

2. The department has amended ARM 17.56.101, 17.56.102, 17.56.309, 17.56.701, 17.56.903, and 17.56.1001 exactly as proposed, and has amended ARM 17.56.308, 17.56.310, and 17.56.815 as proposed, but with the following changes (new matter underlined, deleted matter interlined):

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

(2) through (4) remain as proposed.

(5) ~~Operating permits must be kept legible and must be posted in a place that is visible to delivery personnel whenever petroleum deliveries are conducted.~~ The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in (2) and (4). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of revocation.

(6) The department may suspend, revoke, or determine not to renew an operating permit and tag issued under this rule upon its finding that there is substantial evidence that:

(a) through (c) remain as proposed.

(7) Except as provided in (8), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

(8) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, poses an immediate or substantial threat to the public health, safety, or environment, it may immediately revoke the operating permit and tag. A permittee whose operating permit ~~has~~ and tag have been revoked in accordance with this rule may request a hearing before the

department. The department shall schedule a hearing within 10 days of the request for hearing.

(9) remains as proposed.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY

OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) remains as proposed.

(3) A conditional operating permit and tag issued under (1) or (2) expires 180 days after issuance.

(4) through (5)(b) remain as proposed.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit and tag when operation of the UST is necessary to protect the safety and welfare of persons, property, or national security from imminent harm or threat of harm.

(a) through (d) remain as proposed.

17.56.815 MONTANA PETROLEUM TANK RELEASE CLEANUP FUND

(1) remains as proposed.

(2) If an owner or operator ~~applies~~ uses the petroleum tank release cleanup fund as partial satisfaction of the coverage requirements of ARM 17.56.805, the owner or operator may ~~satisfy the remaining portion of the required coverage~~ demonstrate that remaining coverage requirements are met by certifying a tangible net worth equal to that amount.

(3) remains as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: It appears that the authority for all subchapter 8 rules was never updated when the statute was split to separate hazardous waste regulation from underground storage tank regulation. Section 75-10-405, MCA, should be changed to 75-11-505, MCA.

RESPONSE: The authority citation for ARM 17.56.815 has been corrected. The authority citations for all other ARM Title 17, chapter 56, subchapter 8 rules will be updated in a future rulemaking.

COMMENT NO. 2: In ARM 17.56.805(2) the third line duplicates, in part, the second line. Delete "financial responsibility for taking corrective" in the third line of the rule.

RESPONSE: The suggested amendment to ARM 17.56.805(2) is outside the scope of this rulemaking, because ARM 17.56.805 is not being revised in this rulemaking. However, the department agrees with the comment and will consider the suggested amendment in a future rulemaking.

COMMENT NO. 3: With respect to the proposed revision to ARM 17.56.815, change the word "applies" to "utilizes" and change "satisfy the remaining portion of the required coverage" to "demonstrate remaining coverage requirements are met."

RESPONSE: The department agrees with the comment and has amended ARM 17.56.815.

COMMENT NO. 4: ARM 17.56.815 should be expanded to include a subsection requiring updated financial assurance information at any time a violation is issued.

RESPONSE: The department believes that the suggested updating of financial assurance information at any time a violation is issued would burden facilities more than necessary in meeting financial responsibility requirements. As stated in the reason for this rule amendment: "Because upgrade requirements, third party inspections, and market forces have driven many fueling facilities out of business, the department does not wish to burden facilities more than necessary in meeting financial responsibility requirements."

COMMENT NO. 5: A comment was received opposing the abolition of the operating tag program.

RESPONSE: The department agrees with the comment and has restored the original operating tag provisions in ARM 17.56.308 and 17.56.310. The department believes the Environmental Protection Agency will promulgate regulations pursuant to the Energy Policy Act of 2005 that would require "tagging" to notify delivery entities whether a tank has been labeled "deliverable" or "undeliverable." Therefore, the department will retain its operating tag program.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: /s/ Richard H. Oppen
RICHARD H. OPPER
Director

Certified to the Secretary of State, March 27, 2006.